

THIS AGREEMENT (the "Agreement") is made in duplicate as of **October 20, 2011**

**Archives of Ontario
LOAN AGREEMENT**

BETWEEN:

Lender: Her Majesty the Queen in Right of Ontario as represented by the
Archives of Ontario

Address: **134 Ian Macdonald Boulevard
Toronto, Ontario
M7A 2C5**

Contact Person: **Lare Chapman, Digital Outreach Coordinator Archives of Ontario**

Tel: **(416) 327- 1550**

Fax : **(416) 327-1999**

Email: **lare.chapman@ontario.ca**

- and-

Borrower: **Ontario Council of University Libraries**

Address: **University of Toronto Library
130 St. George St.
Toronto, On
Canada M5S 1A5**

Contact Person: **Kathy Scardellato, Executive Director Ontario Council of University
Libraries**

Tel: **819-776-8653**

Fax: **819-776-8623**

Email: **kathy.scardellato@ocul.on.ca**

INTERPRETATION AND GENERAL PROVISIONS

1. When used in this Agreement, the following words or expressions have the following meanings:
 - (a) **“Borrower”** means the Ontario Council Of Libraries.
 - (b) **“Borrower's Premises”** means the location where the Loan Material will be stored and digitized.
 - (c) **“Effective Date”** means October 20, 2011.
 - (d) **“Internet Archive”** means the website currently located at <http://www.archive.org/>
 - (e) **“Lender”** means Her Majesty the Queen in right of Ontario as represented by the Archives of Ontario.
 - (f) **“Loan Material”** means, collectively, the archival item or items described in Schedule "A" provided by the Lender to the Borrower for the purposes of digitization and publication in accordance with this Agreement.
 - (g) **“Term of the Agreement”** means the period of time beginning on the Effective Date and ending once the materials have been returned to the Lender.
 - (h) **“Term of the Loan”** means the time period beginning when the Loan Material is removed from the Lender's premises and ending when the loan material is returned to the Lender.
2. In this Agreement, unless it is otherwise clear from the context **"including"** means "including without limitation" and **"includes"** means "includes without limitation"; the use of the word "including" or "includes" is not intended to limit any statement that precedes it to the items immediately following it.
3. **Schedules -** The following Schedules shall form part of this Agreement:

Schedule A - Loan Material From the Archives Of Ontario
4. **No Indemnities from Lender -** Notwithstanding anything else in the Agreement, any express or implied reference to the Lender providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the Lender, whether at the time of execution of this Agreement or at any time during the Term, shall be void and of no legal effect.
5. **Severability -** If any term or condition of the Agreement, or the application thereof to the parties or to any persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Agreement, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

6. **Interpretive Value of Headings** - The headings in the Agreement are for convenience of reference only and in no manner modify, interpret or construe the Agreement.

CONDITIONS OF LOAN

Exhibition of Loan Materials

7. The Lender grants permission for the display of digitized copies of the Loan Materials to be made available via the Internet Archive.
8. The Lender reserves the right to demand the removal from the Internet Archive and destruction of all digitized copies of the Loan Materials for any reason.

SHIPPING DATES:

9. (a) Date loan material to be shipped to Borrower: **On or before October 31, 2011**
(b) Date loan material to be returned to Lender: **On or before December 10, 2011**

MATERIALS TO BE LOANED

10. Lender shall lend the Borrower the Loan Materials according to the terms and conditions of this Agreement for the following limited purpose:
 - (a) Digitized copies of the Loan Materials are provided for research and private study only.
 - (b) The Borrower may not reproduce, resell or permit others to reproduce the digitized copies of the Loan Materials or any facsimile of it.
 - (c) In authorizing the Lender to digitize the Loan Materials for display on the Internet Archive, the Lender does not surrender its own right to publish it, or to grant permission to others to do so.

AUTHORITY OF LENDER:

11. The execution and performance of this Agreement does not or will not violate or infringe upon any personal, statutory or proprietary right or copyright of any third party or parties.

TERM OF THE AGREEMENT:

12. (a) The "Term of the Agreement" means the period of time beginning on the Effective Date and ending once the materials have been returned to the Lender.
(b) Except as the Lender may otherwise agree in writing, the Borrower shall only exhibit the Loan Material at the Internet Archive.

SHIPPING:

13. The Borrower shall arrange and pay for transportation of the Loan Material from and to the Lender including paying the costs of labour and materials related to shipping and arranging the shipping with a carrier acceptable to the Lender.

REPRODUCTION:

14.
 - (a) The Borrower shall exercise the same care in respect to the Loan Materials as it does in the safekeeping of comparable property of its own.
 - (b) The Borrower covenants that the facilities in which the Loan Material shall be digitized or stored during the Term of the Loan shall meet recognized museum standards for environmental levels and controls, and for security for the protection of the loan material from adverse influences, including but not limited to climatic influences, fire, theft, or vandalism.
 - (c) The Borrower is hereby given permission to reproduce the Loan Materials for the purposes of exhibition on the Internet Archive.
 - (d) Digitized copies of the Original Materials will be offered free of charge via the Internet Archive.
 - (e) The Borrower agrees to provide the Lender digitized copies of the Loan Material in JPEG 2000 format.
 - (f) The Lender will provide a suitable storage medium (external USB hard drive) to transport the digitized files. The Borrower will, in a timely manner, transfer the external USB hard drive containing digitized copies of the Loan Material to the Lender. Transport of the external USB hard drive will be made by courier (at a cost accrued by the Borrower) or via hand delivery to the Archives of Ontario public service facility located at 134 Ian Macdonald Boulevard, Toronto.
 - (g) The Borrower agrees to name the digitized files delivered to the Archives with the following standards:

[barcode number unique to volume being digitized]_[four digit sequential number].[file format]

As per example below:

B123456_0001.tiff
or
B123456_0001.jpg

PROMOTION AND CREDIT:

15. (a) The Borrower will acknowledge the participation of the Lender in all acknowledgements, printed materials, electronic communications, publicity, press releases, invitations and catalogues relating to the Loan Material by the use of the credit line:

Archives of Ontario/ Archives de l'Ontario.

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- (b) Information and or metadata about the digitized copies displayed on the Internet Archive and any future iterations of the Internet Archive must conform to the data furnished by the Lender as below:

[Title], [Date]

[Reference Code], [Container Number]

Archives of Ontario

As per example below:

**Report of the Commission appointed to inquire into the affairs of the
Grand Trunk Railway, 1861**

RG 18-10, Box 1

Archives of Ontario

ENVIRONMENTAL STANDARDS (General):

16. At the discretion of the Archives of Ontario, more restrictive environmental standards may be required than those outlined below, depending on the nature of the borrowed materials.
17. The Borrower must maintain a temperature between 18° C – 21° C with daily fluctuations not exceeding +/- 1°C in all areas where original material is stored prior to or after digitization.
18. The Borrower must maintain a relative humidity between 35% and 55% with daily fluctuations not exceeding +/- 5% and monthly fluctuations not exceeding +/- 5% in all areas where original material is stored prior to or after digitization.
19. Loan Materials must be kept from exposure to light at all times and kept in storage unless being transported or digitized.

CARE AND HANDLING:

20. (a) The Borrower shall exercise the same care in respect to the Loan Materials as it does in the safekeeping of comparable property of its own.
- (b) The Borrower covenants that the facilities in which the loans material shall be digitized or stored during the Term of the Loan shall meet recognized museum standards for environmental levels and controls, and for security for the protection of

the loan material from adverse influences, including but not limited to climatic influences, fire, theft, or vandalism.

21. Items loaned to the Borrower shall remain and be maintained in the condition in which they are received. Preservation Services at the Archives of Ontario will have assessed all records being digitized and completed any necessary treatments prior to leaving 134 Ian Macdonald Blvd.
22. Reports of loss, damage or deterioration must be made immediately to the Senior Conservator at the Archives of Ontario at 416-327-1520.
23. The Loan Material shall remain in the possession of the Borrower for the time specified above in this Agreement.
24. Unpacking and repacking of Loan Material shall only be done by the designated staff of the Borrower or Lender.
25. Before the Loan Material is unpacked at the Borrower's Premises, it will be allowed to acclimatize to the environmental conditions prior to digitization. The Lender will advise as to best practices regarding allowing Loan Material to acclimatize prior to loaning.
26. All returnable packing materials associated with the loan must be stored in areas free from water, excessive heat, and insects/vermin.
27. Packing materials will be allowed to acclimatize in the digitization area prior to repacking the loan, if the packing materials have not been stored in the same environmental conditions.
28. All loans will be returned packed in the manner in which they were received.
29. No food, beverages, or smoking will be permitted in any area where the Loan Material is exhibited, stored, received, or held.

INSURANCE:

30. The Borrower shall insure the Loan Material for the Term of the Loan for the insurance value of Fifty-five Hundred Dollars (C\$5500.00).
31. The Borrower must provide a certificate of insurance confirming a valid insurance policy with a registered insurance carrier to verify insurance.
32. The shipping company selected by Borrower must provide a certificate of insurance confirming a valid insurance policy with a registered insurance carrier to verify insurance.
33. The Borrower's insurance policy shall insure the Loan Material against risk of loss or damage from external causes or events *from wall to wall*, while in transit or on location and shall contain the usual exclusions for loss and damage.

34. The Lender shall accept the amount paid by the Borrower's insurer in full satisfaction of any claim, action or right on account of any loss or damage.
35. The Borrower is responsible for its own insurance and should carry all the necessary and appropriate insurance that a prudent person in the business of the Borrower would maintain including but not limited to commercial general liability insurance. The Borrower is not covered by the Province of Ontario's insurance program and no protection will be afforded to the Borrower by the Government of Ontario for any claims that may arise out of the Contract.

SECURITY:

36. All Loan Material must only be handled by authorized personnel of the borrowing institution.
37. At no time must Loan Material be left unsupervised in public areas, or unsecured in non-public areas.

PREPARATION OF LOAN MATERIAL FOR DIGITIZATION:

38. Borrower must not attempt treatments of any kind. All Loan Materials will be stabilized prior to loan.

AMENDMENT:

39. This Agreement may only be amended by an instrument in writing executed by the Parties.

ASSIGNMENT:

40. The Lender reserves the right to transfer or assign freely in order to accommodate its business needs including organizational changes.

ENTIRE AGREEMENT:

41. The Agreement embodies the entire agreement between the Parties with regard to the provision of Loan Materials and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Loan Materials, existing between the parties at the date of execution of this Agreement.
42. It is the responsibility of the Borrower to ensure that all their personnel including subcontractors, employees, agents and volunteers involved with the handling of the loan comply with all provisions of this Agreement.

GOVERNING LAW:

43. The Agreement is governed by the laws of the Province of Ontario and federal laws of Canada applicable therein. The Parties attorn to the jurisdiction of the courts of Ontario.

NOTICES AND COMMUNICATIONS:

44. Any notice or other communication required or permitted to be given under this Agreement in writing, shall be given to the receiving party in person or by courier or by prepaid registered mail at a time when normal postal service is in effect at the address given in this Agreement and shall be deemed effective if delivered in person or by courier, on the date of delivery; and if sent by prepaid registered mail at a time when normal postal service is in effect on the fifth business day following mailing.

TERMINATION:

45. (a) Each party is entitled to terminate this Agreement without notice if the other party becomes bankrupt or insolvent or has a receiver or receiver-manager appointed for any of its property.
- (b) Any termination of this Agreement shall not affect any liability or obligation existing under this Agreement and all representations and warranties shall remain in full force and effect notwithstanding any such termination.
- (c) The Lender reserves the right to withdraw the Loan Material from the Borrower if the Lender determines, in its sole and absolute discretion, that the Borrower has been negligent in the care of the Loan Materials or has not fulfilled the Loan Conditions or other requirements under this Agreement.

SURVIVAL OF WARRANTIES, ETC.:

46. The representations and warranties of the Parties shall continue in full force and effect for a period of three years following the Term of the Loan.

AUTHORIZED REPRESENTATIVES:

47. The Authorized Representatives of the Parties are the individuals named in the signature portion of this Agreement unless written notice of a change in or addition to the named Authorized Representative is given to the other party. Each party represents that the individuals named by them as Authorized Representatives have the full authority and capacity to enter into this Agreement on their behalf.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

HER MAJESTY THE QUEEN in right of Ontario as represented by the Chair of Ministry of Government Services

Signature: 

Name: Angela Forest

Title: Chief Privacy Officer & Archivist of Ontario (A)

Date of Signature: Oct. 20, 2011

Ontario Council of University Libraries

Signature: 

Name: Kathy Scardellato

Title: Executive Director Ontario Council of University Libraries

Date of Signature: Nov 1/11

I have authority to bind the Supplier.

SCHEDULE A

LOAN MATERIAL FROM THE ARCHIVES OF ONTARIO

Description	Year	Container No.	Barcode	temp box #
Report of the Commission appointed to inquire into the affairs of the Grand Trunk Railway	1861	RG 18-10, box 1	B248754	1
Report of the Commission Appointed to Inquire into Matters Connected with the Public Buildings at Ottawa	1863	RG 18-11, box 1	B248755	1
Reports [of the Financial and Departmental Commission], 1863-1864.	1863/64	RG 18-12, box 1	B248756	1
Report of the Railway Postal Service Commissioners Presented to Both Houses of Parliament by Command of His Excellency the Governor General	1865	RG 18-13, box 1	B248757	1
Report [of the Royal Commission to Inquire into and concerning any complaints ... of ill-treatment or extortion practiced upon visitors or others at the Niagara Falls]	1873	RG 18-14, box 1	B249358	3
Report of Commissioners appointed ... to Enquire into the financial affairs of the corporation of the town of Belleville	1877	RG 18-15 box 2	B249361	1
Report: Commission to Investigate Certain Misconduct at the Said College (Agricultural College, Guelph	1884	RG 18-19, box 1	D306228	1
Report of the Commissioners on the Discipline in the University of Toronto	1895	RG 18-33, box 1	D362861	1
Report of the Commission of Enquiry Concerning the Operation of the San Jose Scale Act	1899	RG 18-36, box 1	D362862	1
Re West Elgin Election Investigation: report of commissioners	1900	RG 18-38, box 1	D362860	1
Report of the Commissioners appointed to inquire into and report upon the matters referred to in a resolution of the Senate of the University of Toronto passed on the 20th day of January, 1905	1905	RG 18-42, box 1	D359237	1

Report: Commission of Inquiry Concerning Certain Charges against Charles Edward Whelihan, Registrar of Deeds	1906	RG 18-44, box 1	B249376	1
Report and recommendations in the matter of an investigation into the workings of the Institution for the Blind at Brantford	1907	RG 18-45, box 1	B249377	1
Report of the Commission to Investigate the Workings of the Blind Institute at Brantford and the Deaf and Dumb Institute at Belleville	1907	RG 18-45, box 2	B249378	3
Report of J.C. Judd, Commissioner, upon charges against Thomas McDonald, Registrar, of the County of Dundas	1907	RG 18-47, box 1	B249379	1
Report: Commissioner...of Inquiry into the Cause or Causes of the Destruction or Partial Destruction of Certain Dams on the Napanee River	1911	RG 18-51, box 1	B249380	1
Interim report: Commissioner to investigate certain complaints and charges [against William Patterson]	1912	RG 18-52, box 1	D359234	1
Report: Commission to Enquire into and Report upon All Cases of Impersonation, Intimidation and Other Irregularities in Connection with the By-law [Voting Irregularities Welland]	1913	RG 18-53, box 1	B249381	1
Report as to the quantity of water which the Electrical Development Company of Ontario Limited is Entitled to Divert or use	1918	RG 18-60, box 1	B249392	3
[Report] In the matter of the Building Department of the Board of Education of the City of Toronto	1919	RG 18-64, box 1	B249398	1
Report in the matter of the administration of municipal police forces throughout the province	1919	RG 18-62, box 1	B249395	1
Report of Colin G. Snider, Commissioner, in inquiry respecting Ontario Hospital, Hamilton	1920	RG 49-19	B362703	3

Report of the Commission upon the Victoria Industrial School for boys	1921	RG 18-69, box 1	B249404	1
Report of the Commission to make inquiries and report upon all matters ...connected with...the seizure...of a car of whiskey at the city of Chatham	1921	RG 49-19		3
Report [of the] Inquiry into charges of Violations of the Ontario Temperance Act in Brockville	1921	RG 18-67, box 1	B249401	1
Report of the Commissioner appointed to Inquire into the Truth or Falsity of Certain Charges made Against David Hastings, Police Magistrate at Dunnville	1921	RG 18-70, box 1	B249405	2
Report of the Commissioner re Investigation of the Magistrate and Police of Welland	1921	RG 18-73, box 1	B249416	2
Report on the investigation into the financial affairs of the Municipal Corporation of the Town of Oshawa	1922	RG 18-81, box 1	B249445	2
Report of the Northern Ontario Fire Relief Committee: re administration of funds subscribed for relief of sufferers in fire in Northern Ontario, July, 1922	1922	MU 2207	B287323	3
Inquiry into the Financial Affairs of the Town of Cobourg and any Matter Connected Therewith	1922	RG 18-80, box 1	B249444	2
Report [of the] Commission to Inquire into Financial Affairs of the Township Of Markham	1924	RG 18-85, box 1	B249453	2
Report of the commissioner to investigate and enquire into the truth or falsity of the charges of E.C. Settell, with regard to the administration of the affairs of the Hydro - Electric Power Commission of Ontario	1924	RG 18-84, box 1	B249452	2
Report of the commissioner under Public Enquiries Act in the matter of application for patent of lots 94 and 95 in 3rd concession S.W. of Toronto and Sydenham Road, Township of Glenelg	1925	RG 18-86, box 1	B249454	2
Re Industrial Farm at Langstaff and the Women's Farm at Concord	1926	RG 18-87, box 1	B249455	2

Ottawa Collegiate Institute Inquiry	1927	RG 18-88, box 1	B249456	2
In the matter of a fire that occurred in the Hollinger Consolidated Gold Mines, Limited, and in the matter of an inquiry under the Public Enquiries Act, N.S.O., chapter 20 (Hollinger Mine Inquiry)	1928	RG 18-98, box 1	B249466	3
Report of the honourable James McGee, and the honourable Frank Egerton Hodgins, appointed by order-in-council to enquire into certain matters regarding the election held on December 1st, 1926, in the electoral district of south Ottawa	1928	RG 18-90, box 1	B249458	2
Report on the London Gaol Inquiry	1928	RG 18-89, box 1	B249457	2
Report [of the] Inquiry into Ownership of the North One-half of Lot Number Seven, Ninth Concession, Township of Glenelg, County of Grey	1931	RG 18-93, box 1	B249461	2
Report of James McNairn Hall, junior judge of the District of Algoma, as Royal Commissioner on the Enquiry as to the Handling of Unemployment and Direct Relief at Sturgeon Falls, Ontario	1933	Rg 18-97, box 1	B249465	2
Report of James McNairn Hall, junior judge of the District of Algoma, as Royal Commissioner of the Enquiry as to the Administration of Relief at York Township, Ontario	1933	RG 18-100, box 1	B249472	2
Report of [the] Niagara Parks Commission Inquiry	1934	RG 18-101, box 1	B249473	3
Report [of the] Inquiry Respecting the Appointment and Resignation of Daniel McCaughrin, Police Magistrate	1934	RG 18-102, box 1	B249474	2
Report of I.A. Humphries, commissioner, appointed under the Public Enquiries Act, respecting the General Elections to the Legislative Assembly of the Province of Ontario, held on the 19th day of June, 1934	1935	RG 49-19	B235333	3

Report of the Commissioner appointed under the Public Inquiries Act, respecting Ontario Athletic Commission	1935	RG 18-106, box 1	B249478	2
Liquor Control Board Inquiry report	1935	RG 49-19	B351242	3
Proceedings of the Royal Commission appointed to inquire into and report upon certain charges of mismanagement and impropriety in connection with the administration of the affairs of the Department of Northern Development in the District of South Cochrane	1936	RG 18-111, box 1	B249484	2
Report of the Inquiry Into the Internal Management of the Ontario Hospital, Mimico	1935	RG 18-110, box 1	B249483	2
Commissioner's report in the matter of the Municipal Act and in the matter of the municipal corporation of the town of Collingwood	1937	RG 18-113, box 1	B249487	2
Report on matters pertaining to a statement appearing in the issue of March 31, 1942, of the Globe and Mail, a newspaper published in the city of Toronto	1942	RG 18-119, box 1	B249501	3
Report on the charges made by provincial constable J.E. Keays in a document of resignation addressed to the commissioner, Ontario Provincial Police, Toronto, Ontario, and dated at Belleville, October 30th, 1948	1949	RG 18-128, box 1	B249554	2
Royal Commission re East Windsor Health Association: report of the commissioner	1952	RG 18-132, box 1	B249599	2
Royal Commission Appointed to Enquire into Conditions at the Don Jail, Toronto	1952	RG 18-133, box 1	B249604	2
In the matter of an investigation under section 46 of the Police Act, R.S.O. 1950, chapter 279, as to the arrest and detention of Robert Wright and Michael Griffin	1954	RG 18-134, box 1	B249607	2
Report of the Commissioner Respecting the Financial Affairs of the Corporation of the City of Belleville	1959	RG 18-136, box 1	B249612	2

General report: Hydro-Electric Inquiry Commission	1924	RG 18-83, box 1	B249448	3
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